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Class Counsel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE FERRERO LITIGATION

Case No. 11-cv-00205-H-KSC

Pleading Type: Class Action

**DECLARATION OF JACK FITZGERALD IN SUPPORT OF
PLAINTIFFS' MOTION FOR APPEAL BOND**

Judge: The Honorable Marilyn L. Huff

Hearing: November 13, 2012

Time: 10:30 a.m.

Location: Courtroom 13

1 I, Jack Fitzgerald, declare::

2 1. I am a member in good standing of the State Bars of California and New York; and of
3 the United States District Courts for the Northern, Central, and Southern Districts of California and the
4 Southern and Eastern Districts of New York; and of the United States Court of Appeals for the Ninth
5 Circuit. I am Class Counsel in the above-captioned action. I make this declaration in support of
6 Plaintiffs' Motion for Appeal Bond.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of a printout of The Law Office
8 of Grenville Pridham's webpage listing Mr. Pridham as the firm's principal attorney.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of a printout of the Bandas Law
10 Firm's webpage.

11 4. Attached hereto as **Exhibit 3** is a true and correct copy of the Ninth Circuit Court of
12 Appeals' August 30, 2012 Order directing Objector-Appellants to file a Mediation Questionnaire.

13 5. Attached hereto as **Exhibit 4** is a true and correct copy of the Ninth Circuit Court of
14 Appeals' September 17, 2012 Order directing Objector-Appellants to file a Mediation Questionnaire.

15 6. Attached hereto as **Exhibit 5** is a true and correct copy of Objector-Appellants Drey and
16 Pridham's Ninth Circuit Court of Appeals Mediation Questionnaire dated September 24, 2012.

17 7. I estimate that the cost of preparing and filing the record and briefs and the cost of the
18 reporter's transcript will be \$15,000.

19 8. I received, from Rust Consulting, and have reviewed, the most recent claims data for
20 this settlement. In California, 56,146 class members filed claims.

21 9. On October 11, 2012, I executed financial calculations involving the determination of
22 interest on a sum of money. I made these calculations pursuant to 28 U.S.C. § 1961, which provides in
23 pertinent part:

24 Interest shall be allowed on any money judgment in a civil case
25 recovered in district court . . . Such interest shall be calculated from
26 the date of the entry of judgment, at a rate equal to the weekly 1-year
27 constant maturity Treasury yield, as published by the Board of
28

11. The computation requires the application of the applicable interest rate of 0.20% to a Settlement Fund in the Amount of \$419,076. The interest computation period is 20 months. This computation yields an interest amount of \$1,396.92.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 11, 2012 in San Diego, California.

/s/ Jack Fitzgerald
Jack Fitzgerald

1 DATED: October 11, 2012

Respectfully Submitted,

2 /s/ Jack Fitzgerald

3 Jack Fitzgerald

4 **THE WESTON FIRM**
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21 **Class Counsel**

EXHIBIT 1

**LAW OFFICE OF
GRENVILLE
PRIDHAM**

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ABOUT GRENVILLE PRIDHAM



- Over 20 years of experience
- Licensed in California and Nevada
- Graduate of the University of Illinois, Champaign/Urbana
- Graduate of the University of San Diego School of Law
- Nevada Deputy Attorney General for over 10 years
- Member of NACA (National Association of Consumer Advocates)

The firm's principal attorney, Grenville Pridham, has been fighting for consumer rights for over 20 years. Mr. Pridham is a member of the National Association of Consumer Advocates and was Deputy Attorney General for the State of Nevada for over 10 years, prosecuting securities, telemarketing and consumer fraud cases. Mr. Pridham is a consumer advocate and primarily litigates in the areas of NASD arbitrations, Fair Debt Practice Act, Truth in Lending Act, Auto Fraud, and miscellaneous consumer protection statutes.

Mr. Pridham's experience prosecuting securities fraud has enabled him to handle NASD arbitrations for investors who may have been victimized by their stock broker. Estate planning is an offshoot from his interest in financial fraud, which is the common denominator among the areas of law that Mr. Pridham practices. The primary goals of the estate planning process is helping persons avoid becoming a victim of a financial fraud either through education or performing due diligence for proposed investments while setting up clients' estates to pass smoothly to the intended beneficiaries. Mr. Pridham's knowledge of the securities markets and investment principles is particularly helpful to clients who may have been given conflicting advice concerning the best investment vehicles to use in their estate planning. Mr. Pridham approaches estate planning with a team concept, bringing all of a client's advisors together or including appropriate professionals to help design the client's plan. Mr. Pridham also handles personal injury cases as his practice allows.

Mr. Pridham is passionate about the law and maintains the highest professional legal and ethics standards. As a member of the bar associations of the California and Nevada, Mr. Pridham is admitted to practice in the state and federal courts of both jurisdictions.

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EXHIBIT 2

A trial law firm for the injured

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(866) 849-5200

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About Our Texas Law Firm



Offices in Corpus Christi, Helping People Throughout Texas and Nationwide. Our firm has secured a number of substantial recoveries for victims injured or killed in oil field accidents, trucking accidents, and as a result of defective products.

Led by Chris Bandas, the qualified attorneys at Bandas Law Firm apply the strength of experience, know-how and drive in an effort to protect the rights of their clients against deceptive insurance companies, oil companies and other corporations. The main goal of the attorneys at Bandas Law Firm is to protect the "little guys," or the plaintiffs who are injured or wronged at the hands of big businesses. Chris Bandas was rated by his peers in the Martindale-Hubbell publication for having an "exemplary reputation" – and he has the results to back it up. Chris has secured a number of substantial recoveries for victims injured or killed in oil field accidents, trucking accidents, and as a result of defective products.

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Fighting for the People of Texas

Most notably, Chris has secured impressive recoveries from oil industry giants on behalf of Texas landowners whose properties were polluted or contaminated because of leaking pipelines, improper chemical and solid waste disposal, or improper drilling practices. Based in Corpus Christi, Texas, the attorneys at Bandas Law Firm are exceedingly familiar with Texas laws governing oil companies and the catastrophic consequences that can result from negligent procedures and unsafe practices. Chris Bandas has first-hand insight into the improper tactics of corporations, and can help you protect yourself, your rights and your land against the environmental contamination caused by negligent companies.

Protecting You from Insurance Companies

Another impropriety affecting injured victims in Texas is the dishonest actions of some insurance claims adjusters, who sometimes prey on car accident victims in need of financial help. Too often, insurance companies reject personal injury claims or pay out an amount far below what victims are entitled to, in an attempt to save the company money. This type of deceptive practice is exactly what Bandas Law Firm is taking action against – big businesses using their considerable budget and resources to take advantage of the little guy.

Business and Contract Law in Texas

Chris Bandas has also used his experience in litigating many different types of legal issues in Texas to stand up for small businesses and individuals, enforcing contracts and protecting trade secrets, patents and intellectual property. The knowledgeable attorneys at Bandas Law Firm know how difficult it can be for some individuals and businesses to stand up against well-funded corporations, which is why the Corpus Christi firm represents all plaintiffs on a contingency fee basis. In other words, your attorney will represent you with no money down, and will not collect any payment unless you win or settle your case.



Bandas Law Firm, P.C.

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EXHIBIT 3

FILED

UNITED STATES COURT OF APPEALS

AUG 30 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: FERRERO LITIGATION,

No. 12-56469

ATHENA HOHENBERG, individually
and on behalf of all others similarly
situated and LAURA RUDE-BARBATO,
on behalf of herself and all others similarly
situated,

D.C. No. 3:11-cv-00205-H-KSC
Southern District of California,
San Diego

Plaintiffs - Appellees,

COURTNEY DREY and ANDREA
PRIDHAM,

ORDER

Objectors - Appellants,

v.

FERRERO USA, INC., a foreign
corporation,

Defendant - Appellee.

The Court of Appeals' records do not indicate that appellants have filed a Mediation Questionnaire in accordance with Circuit Rule 3-4.

Within seven (7) days of the filing of this order, appellants shall: (a) file a Mediation Questionnaire (available on the court's website, www.ca9.uscourts.gov); (b) dismiss the appeal voluntarily pursuant to Fed. R. App. P. 42(b); or (c) show

cause in writing why this appeal should not be dismissed pursuant to Ninth Cir. R. 42-1. Failure to comply with this order will result in dismissal pursuant to Ninth Cir. R. 42-1.

FOR THE COURT:

By: Elisa P. Monterola
Deputy Clerk

em/mediation

EXHIBIT 4

FILED

UNITED STATES COURT OF APPEALS

SEP 17 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: FERRERO LITIGATION,

No. 12-56469

ATHENA HOHENBERG, individually
and on behalf of all others similarly
situated and LAURA RUDE-BARBATO,
on behalf of herself and all others similarly
situated,

D.C. No. 3:11-cv-00205-H-KSC
Southern District of California,
San Diego

Plaintiffs - Appellees,

COURTNEY DREY and ANDREA
PRIDHAM,

ORDER

Objectors - Appellants,

v.

FERRERO USA, INC., a foreign
corporation,

Defendant - Appellee.

Appellants have failed to file a Mediation Questionnaire in accordance with the court's order of August 30, 2012. Within seven (7) days of the filing date of this order, appellants shall file a Mediation Questionnaire (available on the court's website, www.ca9.uscourts.gov) or a motion to dismiss the appeal voluntarily

under Fed. R. App. P. 42(b), or shall show cause in writing why this appeal should not be dismissed.

Failure to comply with this order will result in dismissal. See Ninth Cir. R. 42-1.

FOR THE COURT:

By: Elisa P. Monterola
Deputy Clerk

em/mediation

EXHIBIT 5

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	12-56469		
District Court/Agency Case Number(s):	11-CV-205-H-KSC		
District Court/Agency Location:	Southern District of California		
Case Name:	Hohenberg and Rude- Barbato	v.	Ferrero USA, Inc.
If District Court, docket entry number(s) of order(s) appealed from:	127		
Name of party/parties submitting this form:	COURTNEY DREY and ANDREA PRIDHAM		

Please briefly describe the dispute that gave rise to this lawsuit.

The Appellant-Objectors objected to the Class Action Settlement Agreement because class counsel caved in on the claim that Nutella was deceptively marketed as nutritious; class counsel engaged in a conflict of interest that provided them 77.9% of the settlement package deal; the notice of the fee application was defective; and the settlement agreement plainly failed to comply with the governing authority set forth by the Ninth Circuit in Mercury Interactive and Bluetooth.

Briefly describe the result below and the main issues on appeal.

Whether it is appropriate for a District Court to grant injunctive relief affirming that Nutella can "Turn a balanced breakfast into a tasty one."
 Whether Appointed Class Counsel met the adequacy standards.
 Whether class counsel's fee award that constitutes 77.9% OF THE PACKAGE DEAL violates a benchmark of 25% set forth in the 9th Circuit Precedent in Bluetooth.
 Whether notice of Class Counsel's fee request failed to comply with the plain language of FRCP 23 and the governing authority set forth by the Ninth Circuit in Mercury Interactive and Bluetooth.

Describe any proceedings remaining below or any related proceedings in other tribunals.

There is a parallel nationwide class action in IN THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF NEW JERSEY, Glover v. FERRERO USA, INC., ; In re: NUTELLA MARKETING AND SALES PRACTICES LITIGATION, Civil Action No. 3:11-cv-01086-FLW-DEA

Provide any other thoughts you would like to bring to the attention of the mediator.

Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp., 618 F.3d 988 (9th Cir. Cal. 2010) and In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 948 (9th Cir. Cal. 2011) provide the relevant holdings explaining why the settlement agreement, as approved, does not comply with law.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

☒ (see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

☒ may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.